IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1122 of 2018

1.Sakunthala

2.Stalin

3.Minor Praveen Kumar

4.Minor Ezhilarasan

5.Vediammal

Minors 3 & 4 represented by their mother
and natural guardian the 1st petitioner ... Appellants/Claimants

Vs

The Managing Director,
Tamil Nadu State Transport Corporation,
Thenimalai,
Tiruvannamalai Region. ... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the Judgment and Decree dated 31.10.2014 made in M.A.C.T.O.P.No.90 of 2013, on the file of the Motor Accident Claims Tribunal and Chief Judicial Magistrate, Tiruvannamalai.

For Appellants :Mr.F.Terry Chellaraja

For Respondent :Mr.K.J.Sivakumar

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimants aggrieved over the fixation of 25% negligence on the part of the deceased and the quantum of compensation awarded by the Tribunal at Rs.13,36,020/-. The victim K.Elumalai, aged about 38 years, working as Village Administrative Officer's Assistant (Village Assistant), allegedly earning about Rs.20,000/- was riding his two wheeler from Anvarapath towards Chengam on Chengam to Polur road. At that time the respondent/transport corporation bus driven rashly and negligently, hit against the two wheeler, causing death of Elumalai. Therefore, the legalheirs of said Elumalai filed the claim petition.

2.On contest the Tribunal fixed 25% negligence on the victim and 75% on the driver of the Transport Corporation and determined the monthly income at Rs.11,190/- and adopting “15” as multiplier, including other heads, awarded a sum of Rs.13,36,020/-, which is challenged by the family members of the victim, both on the ground of negligence as well as quantum.

3.Heard, Mr.F.Terry Chellaraja, learned counsel appearing for the appellants and Mr.K.J.Sivakumar, learned counsel appearing for the respondent.

4.The Tribunal on perusal of evidence and based on the facts of the case, found 25% negligence on the part of the victim and 75% on the part of the driver of the transport corporation. To come to the said conclusion, the Tribunal relied upon evidence of RW1 to RW3, and especially, RW3, who stated that he was travelling in the bus and he witnessed the accident. However, a close perusal of RW3's evidence would reveal that he heard the noise in the front side of the bus and he did not know due to whose negligence, the accident occurred. Therefore, reliance placed on RW3's evidence to come to the conclusion that the accident occurred due to 25% contributory negligence on the part of the deceased is erroneous and the same is set aside.

5.On the other hand, PW2 stated that the accident occurred because of the rash and negligent driving of the bus. Further, the Tribunal itself fixed 75% negligence on the part of the driver of the transport corporation. As this Court already set aside 25% contributory negligence fixed on the part of the victim, this Court holds that the entire negligence was on the part of the driver of the transport corporation and therefore, transport corporation is alone liable for payment of compensation.

6.The Tribunal relying upon Ex.P.4-salary certificate, determined the monthly income of the deceased at Rs.11,190/-. The same is confirmed. However, no future prospects was added by the Tribunal. Since the deceased was aged about 38 years, as per Ex.P.2-post mortem report, 50% has to be added towards future prospects, as per the judgment of the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). After adding 50% towards future prospects, the monthly income comes to Rs.16,785/- (Rs.11,190/- + 50% of Rs.11,190/-).

7.The size of the family is 5 and therefore, ¼th has to be deducted towards "Personal Expenses" as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC). After deducting ¼th towards personal expenses, the monthly income would be at Rs.12,589/- (Rs.16,785/- (-) ¼ of Rs.16,785/-).

8.As the age of the deceased is 38years, the appropriate multiplier is "15" and the loss of income would be at Rs.22,66,020/- (Rs.12,589/- x 12 x 15).

9.Funeral expenses:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is enhanced to Rs.15,000/-.

10.Loss of consortium:

The Tribunal awarded a sum of Rs.50,000/- under this head. The same is reduced to Rs.40,000/- as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC).

12.Love and affection:

The Tribunal awarded a sum of Rs.1,00,000/- under this head. The same is confirmed.

13.Transportation charges:

The Tribunal awarded a sum of Rs.10,000/- under this head. The same is confirmed.

14.Loss of estate:

No amount was awarded by the Tribunal, under this head. Hence, this Court awards a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Loss of income	2266020

Head	Amount (Rs.)
Funeral expenses	15000
Loss of consortium	40000
Love and affection	100000
Transportation charges	10000
Loss of estate	15000
Total	2446020

15.Hence, the total compensation payable in this case is Rs.24,46,020/- rounded off to Rs.24,46,000/-.

16.The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed.

17.Out of the award amount, the claimants are entitled to get shares as per the ratio fixed by the Tribunal.

18.The Transport Corporation is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, within twelve weeks from the date of receipt of a copy of this order, failing which, the Chairman-cum-Managing Director and Chief Financial Officer-cum-Chief Accounts Officer shall appear before this Court.

19.On such deposit being made, The Tribunal is directed to transfer the respective shares of the claimants 1, 2 and 5 to their bank accounts through RTGS. As far as 3rd and 4th claimants/minors' share are concerned, the same shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, till they attain majority. The 1st appellant is permitted to withdraw interest accruing on such deposit once in three months.

20.The claimants are directed to pay the additional court fee, if any, within a period of four weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimants' counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, preventing the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

18.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.13,36,020/- to Rs.24,46,000/- with interest. No costs. For reporting compliance, call the matter after fourteen weeks.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

sai

To

The Chief Judicial Magistrate
(Motor Accident Claims Tribunal),
Tiruvannamalai.

Copy To

The Section Officer,
Judicial Posting Section,
High Court, Madras.

+1cc to Ms.M.Malar, Advocate SR.No.50452

+1cc to Mr.K.J.Sivakumar, Advocate SR.No.50049

C.M.A.No.1122 of 2018

GMY(14/09/2018)